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Public Prosecutor v Suzie Adrina bte Ahmad

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO S–05–74 OF 2003

B GOPAL SRI RAM, ARIFIN ZAKARIA AND NIK HASHIM JJCA

11 JULY 2006

Criminal Law — Dangerous Drugs Act 1952 — s 39B(2) — Accused shown to be trafficker under s 39(B)(1)(a) of Act — Whether weight of the drug has any bearing on his or her commission of the offence

C

Criminal Law — Dangerous Drugs Act 1952 — s 39B(2) — Evidence of chemist — Whether so inherently incredible that no reasonable person could believe it to be true

D

Criminal Law — Dangerous Drugs Act 1952 — s 39B(2) — Mens rea — Whether may be inferred from proved or admitted circumstances of a particular case

E *Criminal Procedure — Prosecution — Prima facie case — Close of prosecution's case — Whether prima facie case established*

F The police acting on information received about a drug smuggler kept a lookout at the Kota Kinabalu International Airport. PW1 saw the respondent. He stopped her. He noticed that she looked shocked. The respondent was pushing a trolley. There were 2 bags on it: one on top of the other. PW1 searched the bag that was on top Exh P4(2). It was locked. The respondent had the key. She handed it to PW1 who used it to open exh P4(2). In it he found a package that contained a crystalline substance which on subsequent chemical examination was found to be 1,483 G grammes of methamphetamine, a proscribed drug under the Act. The respondent was arrested. She was subsequently charged with and tried for an offence under s 39B(2) of the Dangerous Drugs Act 1952 ('the Act'). At the close of the case for the prosecution, the High Court held that a prima facie case had not been proven against the respondent. The High Court thus acquitted and discharged the H respondent without calling for her defence. The High Court found that the prosecution had failed to adduce sufficient evidence from which an inference that the respondent knew that the drug in question was in the box in which it was found. There should be evidence of who she met, of how she came by the baggage and how she came to check in the baggage. The security officer who scanned the baggage should also have been called to give evidence as to whether the drug could be detected I and whether it was detected, held the High Court. Further, the chemist's evidence fell short of the requirements of s 37(j) of the Act and did not go to prove the weight of the drug as stated in the charge, said the High Court. The chemist had only analysed less than 2% of the seized drugs. The prosecution thus appealed to the Court of Appeal.

Held, allowing the prosecution's appeal:

(1) The approach adopted by the learned judge cast too heavy a burden on those entrusted with law enforcement. Mens rea possession of the drug (not merely physical possession) had to be proved. However, knowledge like any other state of mind is a fact that is to be inferred from proved or admitted circumstances of a particular case (see para 5).

(2) In the instant case, the facts revealed the following: (a) the respondent had actual physical possession by the of the bag (exh P4(2)) in which the drug was found. Exhibit P4(2) was locked at the material time. The respondent had the key to exh P4(2). Prima facie, therefore, nothing could be placed into exh P4(2) or taken out of it without her assent. This led to the strong inference that she had mens rea possession of the drug; (b) the respondent appeared shocked when she was stopped by PW1. This was evidence which was clearly relevant and admissible by virtue of s 8 of the Evidence Act 1950; (c) the respondent travelled from Kota Kinabalu to Penang and returned within a period of less than 24 hours. The circumstances when taken together led to the irresistible inference that the respondent was trafficking in the drug in question. It was then for her to rebut this inference by offering a plausible explanation (see para 6).

(3) In the instant case, the prosecution had, at the close of its case, established a prima facie case of actual trafficking under s 39B(1)(a) of the Act (see para 8).

(4) The evidence of the chemist in the present case met the requirements set out by the Chief Justice of Malaya in *Public Prosecutor v Lam San* [1991] 3 MLJ 426. The issue which the trial judge had to decide was whether the chemist's evidence that the drug in this case was methamphetamine was so inherently incredible that no reasonable person could believe it to be true. This was not the approach adopted by the trial judge. Hence there was a misdirection by the trial judge of himself in respect of the chemist's evidence (see para 11); *Public Prosecutor v Lam San* [1991] 3 MLJ 426 followed.

(5) Even on the basis accepted by the trial judge that the prosecution had established that the weight of the drug in question was 2.332 grammes, he ought nevertheless to have called for the defence. This was because the prosecution had established a prima facie case of actual trafficking. Further, where an accused is shown to be a trafficker under s 39(B)(1)(a) of the Act, the weight of the drug he or she carries has no bearing whatsoever on his or her commission of the offence (see para 12).

(6) In the instant case, the trial judge had failed to draw the proper inferences from the totality of the evidence. The trial judge ought to have called for the respondent's defence to the trafficking charge (see para 14).

[Bahasa Malaysia summary

Pihak polis yang bertindak berdasarkan maklumat yang diterima berhubung penyeludup dadah telah mengawasi Lapangan Terbang Antarabangsa Kota Kinabalu. PW1 telah melihat responden dan menahannya. Beliau perhatikan yang responden kelihatan terkejut. Responden sedang menolak troli di mana terdapat dua beg

dalamnya. PW1 memeriksa beg yang berada di atas eksh P4(2). Ia berkunci. Responden mempunyai kuncinya dan menyerahnya kepada PW1 yang menggunakannya untuk membuka eksh P4(2). Dalamnya beliau menjumpai bungkusan yang mengandungi bahan kristal yang setelah dijalani pemeriksaan kimia ke atasnya merupakan 1,483g methamphetamine, dadah yang diharamkan di bawah Akta. Responden telah ditangkap. Beliau kemudiannya telah dituduh dengan dan dibicarakan kerana kesalahan di bawah s 39B(2) Akta Dadah Berbahaya 1952 (Akta tersebut'). Di penutup kes pihak pendakwa, Mahkamah Tinggi memutuskan bahawa satu kes prima facie tidak dibuktikan terhadap responden. Mahkamah Tinggi oleh itu telah melepas dan membebaskan responden tanpa memanggil untuk pembelaannya. Mahkamah Tinggi mendapati bahawa pihak pendakwa telah gagal untuk mengemukakan keterangan yang mencukupi yang mana satu inferens bahawa responden mengetahui bahawa dadah yang dipersoalkan itu berada dalam kotak di mana ia ditemui. Perlu ada keterangan siap beliau temui, bagaimana beliau mendapat bagasi itu dan bagaimana beliau dapat masuk dengan bagasi itu. Pegawai keselamatan yang mengimbas bagasi itu juga sepatutnya dipanggil untuk memberikan keterangan sama ada dadah itu boleh dikesan dan sama ada ia telah dikesan, seperti yang diputuskan oleh Mahkamah Tinggi. Bahkan, keterangan ahli kimia tidak memenuhi keperluan s 37(j) Akta tersebut dan tidak membuktikan berat dadah itu seperti yang dinyatakan dalam pertuduhan, sepertimana diputuskan oleh Mahkamah Tinggi. Ahli kimia itu hanya menganalisis kurang daripada 2% dadah yang dirampas. Pihak pendakwa oleh itu telah merayu ke Mahkamah Rayuan.

Diputuskan, membenarkan rayuan pihak pendakwa:

(1) Pendekatan yang digunakan oleh hakim yang bijaksana meletakkan beban yang berat ke atas sesiapa yang diamanahkan dengan penguatkuasaan undang-undang. Pemilikan dadah secara mens rea (bukan semata-mata milikan fizikal) hendaklah dibuktikan. Namun, pengetahuan seperti mana keadaan minda merupakan fakta yang dibuat inferens daripada keadaan yang dibuktikan atau diakui dalam kes tertentu (lihat perenggan 5).

(2) Dalam kes semasa, fakta-fakta menunjukkan yang berikut: (a) responden mempunyai milikan fizikal sebenar beg itu (eksh P4(2)) di mana dadah itu ditemui. Ekshibit P4(2) dikunci pada masa matan. Responden mempunyai kunci kepada eksh P4(2) itu. Secara prima facie, tiada apa-apa boleh diletakkan dalam eksh P4(2) atau dikeluarkan tanpa persetujuannya. Ini membawa kepada inferens bahawa beliau mempunyai milikan dadah secara mens rea; (b) responden kelihatan terkejut apabila beliau ditahan oleh PW1. Ini bukti yang jelas relevan dan boleh diterima menurut s 8 Akta Keterangan 1950; (c) responden dalam perjalanan dari Kota Kinabalu ke Pulau Pinang dan pulang dalam tempoh kurang daripada 24 jam. Keadaan berikut apabila diteliti secara keseluruhan menunjukkan inferens yang tidak dapat dibendung bahawa responden telah mengedar dadah yang dipersoalkan. Oleh itu beliau hendaklah mematahkan inferens ini dengan memberikan penjelasan yang munasabah (lihat perenggan 6).

(3) Dalam kes semasa, pihak pendakwa telah, di penutup kesnya, membuktikan satu kes prima facie pengedaran sebenar di bawah s 39B(1)(a) Akta tersebut (lihat perenggan 8).

(4) Keterangan ahli kimia dalam kes semasa memenuhi keperluan yang ditetapkan oleh HB (Malaya) dalam *Public Prosecutor v Lam San* [1991] 3 MLJ 426. Persoalan yang mana hakim perbicaraan perlu tentukan adalah sama ada keterangan ahli kimia bahawa dadah dalam kes ini adalah methamphetamine memang sukar dipercayai sehingga tiada sesiapa boleh mempercayai ia adalah benar. Ini bukan pendekatan yang digunakan oleh hakim perbicaraan. Oleh itu terdapat salah arah oleh hakim perbicaraan sendiri berkaitan keterangan ahli kimia (lihat perenggan 11); *Public Prosecutor v Lam San* [1991] 3 MLJ 426 diikut.

(5) Jikapun diterima oleh hakim perbicaraan berdasarkan yang pihak pendakwa telah membuktikan bahawa berat dadah yang dipersoalkan adalah 2,332g, beliau sepatutnya telah memanggil pihak pembela. Ini adalah disebabkan pihak pendakwa telah membuktikan satu kes prima facie pengedaran sebenar. Bahkan, di mana tertuduh dibuktikan seorang pengedar di bawah s 39B(1)(a) Akta tersebut, berat dadah yang beliau bawa tidak penting dalam pelaksanaan kesalahan itu (lihat perenggan 12).

(6) Dalam kes semasa, hakim perbicaraan telah gagal untuk membuat inferens yang betul berdasarkan keseluruhan keterangan. Hakim perbicaraan sepatutnya telah memanggil untuk pembelaan responden terhadap pertuduhan pengedaran itu (lihat perenggan 14).]

Notes

For cases on prima facie case, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 2789–2797.

For cases on s 39B(2) of the Dangerous Drugs Act 1952, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 448–453.

Cases referred to

Chan Pean Leon v PP [1956] MLJ 237 (refd)
Chow Kok Keong v Public Prosecutor [1998] 2 MLJ 337 (refd)
Lim Lye Huat Benny v PP [1996] 1 SLR 253 (refd)
Low Kok Wai v PP [1994] 1 SLR 676 (refd)
Navarat Maykha v PP [1995] 1 SLR 228 (refd)
Ong Ah Chuan v PP [1981] 1 MLJ 64 (refd)
PP v Hla Win [1995] 2 SLR 424 (refd)
PP v Lam San [1991] 3 MLJ 426 (folld)
PP v Wan Yue Kong & Ors [1995] 1 SLR 417 (refd)
Poh Kay Keong v PP [1996] 1 SLR 209 (refd)
Saad Ibrahim v PP [1968] 1 MLJ 158 (refd)
Sukor v PP [1995] 1 SLR 221 (refd)
Tan Ah Tee & Anor v PP [1980] 1 MLJ 49 (refd)
Tay Kah Tiang v PP [2001] 2 SLR 305 (refd)
Toh Ah Loh and Mak Thim v Rex [1949] MLJ 54 (refd)

A *Wong Nam Loi v PP* [1997] 3 MLJ 795 (refd)
Yeo See How v PP [1997] 2 SLR 390 (refd)

Legislation referred to
Dangerous Drugs Act 1952 ss 37(j), s 39B(1)(a), 39B(2)
B Evidence Act 1950 s 8

Appeal from: Criminal Trial No K45–01 of 2003 (High Court, Kota Kinabalu)

C *Shamsul Sulaiman (Peguam Negara Malaysia) for the appellant.*
Datuk Chau Chin Tang (VK Liew with him)(VK Liew & Partners) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court):

D **[1]** The respondent was charged with an offence under s 39B(2) of the Dangerous Drugs Act 1952 ('the Act'). She was acquitted at the close of the prosecution's case. The Public Prosecutor appealed to us against the order of acquittal. We allowed the appeal, set aside the acquittal and remitted the case to the High Court with a direction to call upon the appellant to make her defence to the charge. Because of the
E order we made it will be ill advised for us to make any comment on the evidence save that which is absolutely necessary. And we wish to make it crystal clear at the outset that nothing in this judgment is to be construed as an invitation by the High Court to convict the respondent at the close of the case for the defence. Here is a summary of the relevant facts.

F **[2]** At about 1.30am on 20 September 2002, PW1, the head of the narcotic section of the police at Kota Kinabalu summoned five of his officers for a briefing. He had received information about a drug trafficker at the Kota Kinabalu International Airport. He briefed his officers. Then they all left for the airport. On arrival they took their positions. PW1 saw the respondent. He stopped her. He noticed that she looked
G shocked. The respondent was pushing a trolley. There were two bags on it: one on top of the other. PW1 searched the bag that was on top exh P4(2). It was locked. The respondent had the key. She handed it to PW1 who used it to open exh P4(2). In it he found a package that contained a crystalline substance which on subsequent chemical examination was found to be 1,483g of methamphetamine, a proscribed
H drug under the Act. The respondent was arrested. Among the other things that were recovered from the respondent were two sets of used airline tickets (exh P11(1) and P11(2)), two used boarding passes (exh P13(3) and P13(4)) and two baggage claim tags (exh P12(1) and P12(2)). It was on the basis of this evidence that the prosecution invited the High Court to call for the defence, an invitation that was declined by the trial judge.

I **[3]** In acquitting and discharging, the respondent the High Court held that the prosecution had not proved a prima facie case on two grounds. First, because it had failed to adduce sufficient evidence from which an inference that the respondent knew that the drug in question was in the box in which it was found. Second, because

the chemist's evidence fell short of the requirements of s 37(j) of the Act and hence did not go to prove the weight of the drug as stated in the charge but only the lesser weight of 2,332g.

[4] This is what he said in respect of his first ground:

> The fact that the accused took a round trip suggests that the accused had gone to Penang to pick up and check in the baggage which contained the box that was holding the drug. But it still begs the question of whether she knew what was inside the box. There should be evidence of whom she met, of how she came by the baggage and how she came to check in the baggage. She was caught with the bag a few hours after she has checked in which means that it is not difficult, especially when she had travelled in business class, for the ground staff to give evidence as to the circumstances pertaining the checking in of the baggage. The evidence may give some indication as to the state of mind of the accused, that is, whether she knew there was drug in it. The security officer who scanned the baggage should also have been called to give evidence as to whether the drug could be detected and whether it was detected. If such drug can show up after it goes through the X-ray or scanning machine, then it is inherently incredible that someone, knowing that there was drug in the baggage, would still check in the baggage knowing that it will be detected. The more probable inference would point to the person not knowing that there was drug in the baggage. All these evidence should be forthcoming if only the investigation officer had followed the instruction of the Attorney-General Chambers to carry out further investigation. The investigation officer said that he did not carry out the further investigation because he did not believe what the Accused had said.

[5] With respect, we are of the view that the approach adopted by the learned judge casts too heavy a burden on those entrusted with law enforcement. It is of course well settled that *mens rea* possession of the drug (not merely physical possession) must be proved. The authorities on the point are legion. *Toh Ah Loh and Mak Thim v Rex* [1949] MLJ 54, *Chan Pean Leon v Public Prosecutor* [1956] MLJ 237, *Sukor v Public Prosecutor* [1995] 1 SLR 221, *Low Kok Wai v Public Prosecutor* [1994] 1 SLR 676, *Public Prosecutor v Wan Yue Kong & Ors* [1995] 1 SLR 417, *Lim Lye Huat Benny v Public Prosecutor* [1996] 1 SLR 253, *Poh Kay Keong v Public Prosecutor* [1996] 1 SLR 209 and *Yeo See How v Public Prosecutor* [1997] 2 SLR 390. In *Saad Ibrahim v Public Prosecutor* [1968] 1 MLJ 158 Yong J described *mens rea* possession as follows:

> In my opinion mere possession is one thing and possession with mens rea is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raises no presumption of *mens rea*. Without *mens rea* possession cannot be criminal except in certain cases created by statute, which is not applicable in this case.

But knowledge like any other state of mind is a fact that is to be inferred from proved or admitted circumstances of a particular case. See *Wong Nam Loi v Public Prosecutor* [1997] 3 MLJ 795; *Tay Kah Tiang v Public Prosecutor* [2001] 2 SLR 305.

[6] Look at the facts here. First you have the actual physical possession by the respondent of the bag (exh P4(2)) in which the drug was found. Exhibit P4(2) was locked at the material time. She had the key to exh P4(2). *Prima facie*, therefore, nothing could be placed into exh P4(2) or taken out of it without her assent.

This leads to the strong inference that she had *mens rea* possession of the drug. See *Tan Ah Tee & Anor v Public Prosecutor* [1980] 1 MLJ 49. Second, you have the demeanour of the respondent when she was stopped by PW1. She appeared shocked. This is evidence which is clearly relevant and admissible by virtue of s 8 of the Evidence Act 1950. Lastly, you have the evidence of the respondent's movements. She travelled from Kota Kinabalu to Penang and returned. It was all within a period of less than 24 hours. So it is unlikely that she went to Penang for leisure. Only she knows the true purpose of her travel. These circumstances when taken together lead to the irresistible inference that the respondent was trafficking in the drug in question. It is then for her to rebut this inference by offering a plausible explanation.

[7] In *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64, Lord Diplock made certain observations in relation to the Misuse of Drugs Act 1973 of Singapore which have been applied by our courts. See, *Chow Kok Keong v Public Prosecutor* [1998] 2 MLJ 337. This is what Lord Diplock said:

> So, simply to transport from one place to another a quantity of a controlled drug intended for one's own consumption, if unauthorised by the Act or Regulations, involves an offence of having the drug in one's possession under s 6 but does not amount to the offence of trafficking under s 3. It is otherwise, however, if the transporter's purpose, whether it is achieved or not, is to part with possession of the drug or any portion of it to some other person whether already known to him or a potential purchaser whom he hopes to find. This is the consequence of s 10 of the Drugs Act and s 3(c) (which covers the same ground in part). These provisions make the question whether the transporter of the drugs achieves that purpose irrelevant to his guilt of the offence of trafficking under s 3; since they provide that a person who does any act preparatory to, or in furtherance of, or for the purpose of the commission of the offence of trafficking in a controlled drug, shall be guilty of the substantive offence of trafficking and liable on conviction to the penalty provided for it under s 29 and the Second Schedule.
>
> This is a very wide description of acts that may be treated as equivalent to the substantive offence of trafficking; nevertheless, in their Lordships' view, it is clear from the structure of the Drugs Act and the distinction drawn between the offence of having a controlled drug in one's possession and the offence of trafficking in it, that mere possession of itself is not to be treated as an act preparatory to or in furtherance of or for the purpose of trafficking so as to permit the conviction of the possessor of the substantive offence. To bring the provisions of ss 10 and 3(c) into operation some further step or overt act by the accused is needed, directed to transferring possession of the drug to some other person; and it is a consequence of the clandestine nature of the drug trade and the means adopted for the detection of those engaged in it, that the further step that the prosecution is most likely to be able to prove in evidence is the act of the accused in transporting the drug to some place where he intends to deliver it to someone else, whether it be the actual consumer or a distributor or another dealer.
>
> *Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible* — even if there were no statutory presumption such as is contained in s 15 of the Drugs Act.

As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it. All that section 15 does is to lay down the minimum quantity of each of the five drugs with which it deals at which the inference arises from the quantity involved alone that they were being transported for the purpose of transferring possession of them to another person and not solely for the transporter's own consumption. There may be other facts which justify the inference even where the quantity of drugs involved is lower than the minimum which attracts the statutory presumption under section 15. In the instant cases, however, the quantities involved were respectively one hundred times and six hundred times the statutory minimum.

Whether the quantities involved be large or small, however, the inference is always rebuttable. The accused himself best knows why he was conveying the drugs from one place to another and, if he can satisfy the court, upon the balance of probabilities only, that they were destined for his own consumption he is entitled to be acquitted of the offence of trafficking under s 3. (Emphasis added.)

[8] Apply that here. Based on the evidence already discussed, the respondent was caught in the act of conveying a proscribed drug from one place to another. The quantity of the drug is much larger than is likely to be needed for her own consumption. In the absence of any plausible explanation by her, the irresistible inference is that she was transporting the drug for the purpose of trafficking in them. In other words, the prosecution had, at the close of its case, established a *prima facie* case of actual trafficking under s 39B(1)(a) of the Act.

[9] We now turn to the second ground relied on by the learned trial judge. This is what he said about it:

The chemist had analysed less than 2%. Therefore, at most the prosecution had established that 2.332g of the substance were methamphetamine. On this ground alone, the prosecution has failed to establish a *prima facie* case.

[10] With respect, we are unable to agree with the learned judge. And we do not think it necessary to do more than to quote from the judgment of Hashim Yeop A Sani CJ (Malaya) in *Public Prosecutor v Lam San* [1991] 3 MLJ 426 (at p 428):

Looking at the evidence of the chemist in its totality, we found it difficult to accept the doubt of the learned judge at the close of the prosecution case to be a doubt arrived at on a rational basis. PW5 was a highly qualified chemist who had served the Department of Chemistry for 22 years and had testified as an expert witness in many court cases.

As to how a trial court should approach the evidence of a chemist, we wish to advert to the judgment of this court in *Munusamy v PP* [1987] 1 MLJ 492 where in a passage at p 496F, Mohamed Azmi SCJ on behalf of the court put in focus the function of the chemist in a trial of this nature:

We are therefore of the view, that in this type of cases where the opinion of the chemist is confined only to the elementary nature and identity of substance, the court is entitled to accept the opinion of the expert on its face value, unless it is inherently incredible or the defence calls evidence in rebuttal by another expert to contradict the opinion. So long as some credible evidence is given by the chemist to support his opinion, there is no necessity for him to go into details of what he did in the laboratory, step by step.

A Two things are implicit in that passage. First, unless the evidence is so inherently incredible that no reasonable person can believe it to be true, it should be accepted as prima facie evidence. Secondly, so long as the evidence is credible, there is no necessity for the chemist to show in detail what he did in his laboratory.

B In our view, the evidence of the chemist in this case was more than sufficient as basis to call for the defence, granted that all the other ingredients of the offence had been successfully proved.

C The evidence of the chemist must be looked at in its totality. Seen in its totality, the evidence of the chemist in this case is not sketchy at all. There is no need for him to say what instrument he used for the purpose of the analysis or that the instrument was in good working condition as we have to assume until the contrary is shown that he had the proper instrument to carry out his work. In this case he had even gone to the extent of giving a margin of error and had given the benefit of the doubt to the respondent.

D **[11]** The evidence of the chemist in the present instance meets the requirements set out by the learned Chief Justice of Malaya in the above quoted passage. Hence, the issue which the learned judge had to decide is whether the chemist's evidence that the drug in this case was methamphetamine was so inherently incredible that no reasonable person could believe it to be true. Unfortunately, this is not the approach adopted by the learned trial judge. There is hence a misdirection by the learned judge of himself in respect of the chemist's evidence.

E

[12] Further, even on the basis accepted by the learned judge that the prosecution had established that the weight of the drug in question was 2.332g, he ought nevertheless to have called for the defence. This is because, as we have already said, the prosecution had here established a *prima facie* case of actual trafficking.

F And where an accused is shown to be a trafficker under s 39(B)(1)(a) of the Act, the weight of the drug he or she carries has no bearing whatsoever on his or her commission of the offence.

G **[13]** Before we conclude, we think it useful to refer to two decided cases fairly similar to the present. The first is *Navarat Maykha v Public Prosecutor* [1995] 1 SLR 228. There, the accused, a Thai national, arrived at Changi Airport from Bangkok. She was stopped by a customs officer in the arrival hall. Upon a thorough examination of the appellant's bag, a white substance was discovered in the inside-lining of the bag. This was later analyzed to be diamorphine. The accused was charged, tried and convicted for having imported not less than 3,185.2g of

H diamorphine into Singapore. The trial judge called for the defence and after hearing the defence convicted her. An appeal to the Court of Appeal failed. The second is *Public Prosecutor v Hla Win* [1995] 2 SLR 424. There, the accused arrived at the Changi Airport on board a flight from Hatyai, Thailand. He was spotted by a Customs Officer walking with a trolley towards the customs clearance gates. On the

I trolley, there were a brown leather bag and a small white paper bag. The Customs Officer observed the accused to be behaving in a suspicious manner. The leather bag was searched. The inner linings on both sides of the bag were bulging. The lining was slit open and a quantity of white powder was found which on chemical examination was found to be heroin. The accused was tried for trafficking. The trial judge called for his defence. The accused gave evidence that he had no knowledge of the drug.

After hearing his story the trial judge acquitted him. An appeal was dismissed. But it is to be noted that the report of the case shows a detailed examination of the accused's defence.

[14] For the reasons already given, we were unable to agree with the learned judge's decision as he failed to draw the proper inferences from the totality of the evidence. In our judgment, the learned judge ought to have called for the respondent's defence to the trafficking charge. The appeal was accordingly allowed and the case remitted to the court below with a direction to call for the defence.

Prosecution's appeal allowed.

Reported by John Paul Simon